

more simple form as new claim 12.

Third, the Examiner objected to original claim 1 as not making clear that the foodstuff is contained in the barrier casing, and that the claims could read on barrier casings which are not used for foodstuffs. In the telephone interview of October 19, the undersigned explained that as a commercial matter, the barrier casings may be made and sold by applicants and their assignee without the foodstuff contained therein. These food casings would then be sold to food producers, who would then enclose the desired foodstuff filling for the end product. If the claims were required to contain the foodstuff in the casing, rather than to cover the food casing alone, this would deprive applicants of appropriate patent protection for direct infringers who make and sell the empty food casings. Applicants would then unnecessarily be limited to suing their customers for direct infringement or suing the casing producers for contributory or inducing infringement. The same could be said of the coloring and/or flavoring agent(s). However, these have been maintained in claim 11 to retain the present classification and avoid the necessity of a further search.

Further, while applicants are aware that statements of mere intended use in the preamble of a claim are often not given patentable weight, it is submitted that that is not the case here. Thus, the preamble of the present claims "breathes life into the claims," and makes very clear that applicants are claiming a food casing and not a non-food casing. The preamble of claim 11 has been written to make clearer that the casing is for enclosing foodstuffs and for imparting a color and/or flavor to the foodstuff. Also, in accordance with the telephone interview of October 23, claim 11 has been clarified by stating that the amount of coloring and/or flavoring agent is sufficient to impart color and/or flavor to the foodstuff when it is later filled into the casing. Accordingly, the preamble should be given patentable weight in considering the scope of the claims.

New dependent claim 15 covers the specific situation where the barrier casing is already filled with the foodstuff.

Fourth, the Examiner faxed to the undersigned on October 12 a copy of U.S. Patent 4,446,167, raising the concern that the present claims might possibly read on the food casings of that patent, particularly the casings described at the bottom of column 6 and the top of column 7 of the patent, for example casings of regenerated cellulose which may have inner or outer barrier coats and reinforcing materials. While the nature of the "barrier coats" of this

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patent is not clear, the Examiner suggested incorporating into claim 1 a portion of previous claims 7 or 8. Accordingly, new claim 11 incorporates the plastic foil of the first portion of previous claim 7. The remainder of claim 7 has been rewritten as new claim 13 with the modification proposed by the Examiner of using the term "laminated" in place of "joined together so as to be flat" for clarity. Similarly, previous claim 8 has been rewritten as new claim 14 with a couple minor clarifications suggested by the Examiner in the interview of October 23. It is submitted that these new claims with their plastic foils clearly distinguish over the barrier coats of the above patent. For the Examiner's convenience in citing this patent, a PTO-1449 Form is attached hereto.

Finally, the remaining claims have been amended to depend directly or indirectly from new claim 11, and claims 3 and 9 have been amended to clarify the possibly indefinite pronoun "it."

In view of the above amendments and remarks, it is submitted that all of the claims in the application now fully comply with the requirements of 35 U.S.C. § 112 and patentably distinguish over the prior art relied upon by the Examiner. Accordingly, reconsideration and withdrawal of any remaining objections and rejections, and an early Notice of Allowance are respectfully requested.

Respectfully submitted,

**EKKEHARDT SCHÄFER, ET AL.**

October 24, 2000

(Date)

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Enclosure

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